# SUMMARY REPORT OF INVESTIGATION<sup>1</sup>

## I. EXECUTIVE SUMMARY

| Date / Time of Inciden  | nt:  | April 29, 2014, approximately 8:30 p.m.   |
|---|--|---|
| Location of Incident:   |  |   |
| Date / Time of COPA   | Notification:  | August 21, 2014, approximately 11:38 a.m.   |
| and Sergeant  (""""), ran from ther containing a small amore and arrested  sustained scalp lace the officers did not call scene. Instead, both off bag that the had of for processing.  After investigating that Det. used exce | ("Sgt."  m. The officers punt of suspect call through the use cerations that rections ambulance icers spent time discarded, and the this incident, Clessive force in a | partment ("CPD") officers, Detective ("Det."), pulled up to a curb, an individual, pursued During the pursuit, tossed away a bag annabis. Detective ("Det."), caught up to a of force, striking him about the head and face. As a result, quired medical care. Notwithstanding head wounds, ce, nor did they transport to a hospital from the arrest at the scene searching for (and eventually recovering) the he members then transported the to a district station OPA has determined by a preponderance of the evidence pprehending COPA has further determined that Det. Induct by failing to obtain immediate medical attention for |
| II. INVOLVE   | D PARTIES  |   |
| Involved Officer #1:  | Date of Appoin   | Star # Employee ID # Interest   1999; Rank: Police Officer as a paint of Assignment: DOB:   1970; M/W   |
| Involved Officer #2:  |  | , Star # , Employee ID # ; ntment: , 1999, Rank: Sergeant <sup>3</sup> ; ment: , DOB: , 1976; M/S   |
| Individual #1:  |  | ; DOB:, 1992; M/B   |
| l   | I  |   |

<sup>&</sup>lt;sup>1</sup>On September 15, 2017, the Civilian Office of Police Accountability ("COPA") replaced the Independent Police Review Authority ("IPRA") as the civilian oversight agency of the Chicago Police Department. Though IPRA conducted this investigation, the analysis, findings and recommendation(s) set forth herein are COPA's.

<sup>&</sup>lt;sup>2</sup>Detective was promoted to the rank of detective from the rank of police officer in February of 2015.

<sup>&</sup>lt;sup>3</sup>Sergeant was promoted to the rank of sergeant from the rank of police officer on February 1, 2016.

# III. ALLEGATIONS<sup>4</sup>

| CPD Member | Allegation   | Finding /<br>Recommendation      |
|------------|--|----------------------------------|
|            | It is alleged that on 29 April 2014, at approximately 2030 hours, in the vicinity of the alley, you:   |                                  |
|            | 1.) Struck on the head with a gun; and   | Sustained / 15-Day<br>Suspension |
|            | 2.) Failed to obtain immediate medical attention for   | Sustained / 1-Day<br>Suspension  |
|            | It is alleged that on or about 13/14 August, in the vicinity of approximately 1100 hours, you:   |                                  |
|            | 3.) Verbally abused Mr. in that you called him, "pussy, faggot, and bitch," and asked him if he was gay.   | Unfounded                        |
|            | It is also alleged on or about 20 August 2014, in the vicinity of the vicinity |                                  |
|            | 4.) Harassed Mr. in that you handcuffed him, searched him, and asked him if he was gay for no reason.  | Unfounded                        |
|            | It is alleged that on 29 April 2014, at approximately 2030 hours, in the vicinity of the alley, you:   |                                  |
|            | 1.) Failed to obtain immediate medical attention for   | Sustained / 1-Day<br>Suspension  |
|            | 2.) Failed to transport from the scene to the hospital prior to Mr. transport to the police district.  | Sustained / 1-Day<br>Suspension  |

<sup>&</sup>lt;sup>4</sup> These allegations were drafted and served by IPRA investigators.

#### IV. APPLICABLE RULES AND LAWS

## Rules

- 1. Rule 1, CPD Rules of Conduct (prohibiting the violation of any law)
- 2. Rule 5, CPD Rules of Conduct (prohibiting the failure to perform a duty)
- 3. Rule 6, CPD Rules of Conduct (prohibiting the disobedience of an order or directive)
- 4. Rule 8, CPD Rules of Conduct (prohibiting maltreatment)

#### **General Orders**

- 1. G03-02 Use of Force Guidelines (Effective Date: October 1, 2002)
- 2. G03-02-02 *Force Options* (Effective Date: May 16, 2012)
- 3. G06-01-01 Field Arrest Procedures (Effective Date: December 19, 2012)

## Federal Laws

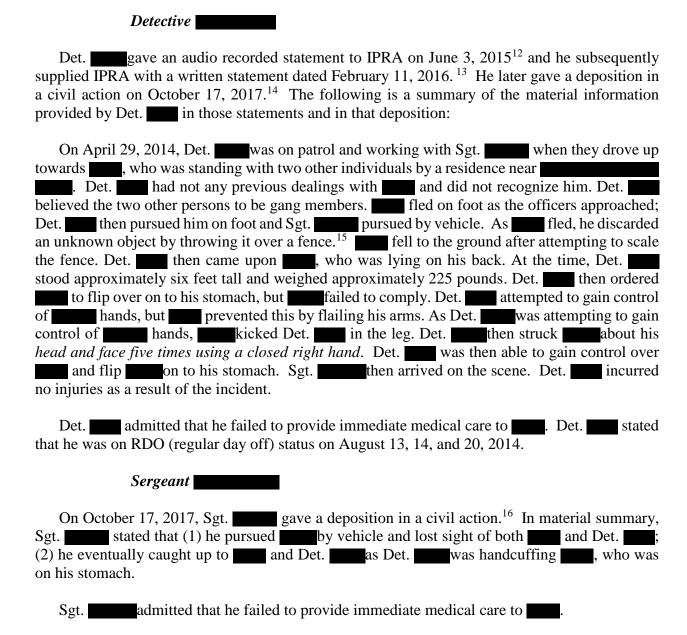
1. United States Constitution, Fourth Amendment

# V. INVESTIGATION<sup>5</sup>

A. Interviews, Depositions, and Statements

| Cook County Medical Examiner ("Dr. ") gave an interview to IPRA on   |
|--|
| April 2, 2015. During the interview, was asked to opine concerning the cause of  |
| head injuries. <sup>9</sup> then viewed an enlarged mugshot photo of that depicted those                               |
| injuries. then opined that the injuries were "probably not [caused by] a fist, not a kick-                             |
| unless the kick was with a steel toe boot, and not with a baseball bat." <sup>10</sup> further opined                  |
| that the injuries could have been caused by "a gun, a baton, or a 2x4 piece of wood." 11                               |
| <sup>5</sup> The following is a summary of the material evidence relied upon COPA in our analysis.                     |
| <sup>6</sup> IPRA interviewed on August 22, 2014. Attachment 14 is an audio recording of that statement; Attachment 15 |
| is a transcript. COPA has not relied on any part of that interview in our analysis.                                    |
| commenced a civil action arising out of his arrest on August 14, 2015, entitled v. City of                             |
| Chicago, et al., Case No. :15-cv- (U.S. District Court, Northern District of Illinois). That action is pending as      |
| of the date hereof. COPA has reviewed depositions given in the action by Detective (Attachment 62), Sgt.               |
| (Attachment 63), (Attachment 64), CPD Sgt. (Attachment 65), and CPD Lt.  |
| (Attachment 66). Except for the depositions of Detective and Sgt. COPA has determined that the                         |
| depositions do not contain information that is material to this investigation.   |
| <sup>8</sup> Attachment 22 is a memorandum of that interview, which IPRA did not audio record.                         |
| $^9$ See id.   |

<sup>&</sup>lt;sup>10</sup>See id. <sup>11</sup>See id.



#### **B.** Documentary Evidence

#### Arrest Report

The applicable Arrest Report<sup>17</sup> demonstrates that arrest took place on April 29, 2014 at approximately 8:31 p.m. The report describes as then standing approximately five feet, eight

<sup>&</sup>lt;sup>12</sup>Attachment 34 is an audio recording of that statement; Attachment 35 is a transcript.

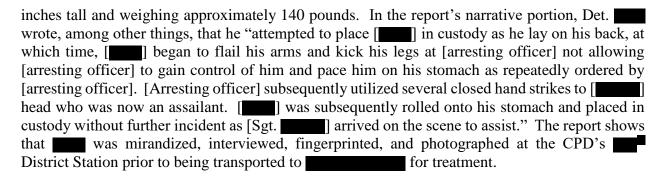
<sup>&</sup>lt;sup>13</sup>Attachment 40.

<sup>&</sup>lt;sup>14</sup>Attachment 62 is a transcript.

<sup>&</sup>lt;sup>15</sup>That item was subsequently recovered by the CPD. It was a clear bag containing 2.5 - 10 grams of suspect cannabis. See Attachment 4, at p. 2.

<sup>&</sup>lt;sup>16</sup>Attachment 63.

<sup>&</sup>lt;sup>17</sup>Attachment 4.



#### Medical Records

#### CPD Attendance Records

CPD Attendance and Assignment Records<sup>19</sup> document Det. as being absent from work on each of August 13, 14, and 20, 2014.

#### VI. LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

- 1. Sustained where it is determined the allegation is supported by a preponderance of the evidence;
- 2. <u>Not Sustained</u> where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
- 3. <u>Unfounded</u> where it is determined by clear and convincing evidence that an allegation is false or not factual; or
- 4. <u>Exonerated</u> where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A preponderance of evidence can be described as evidence indicating that it is more likely than not that the conduct occurred and violated Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

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<sup>&</sup>lt;sup>18</sup>Attachment 16.

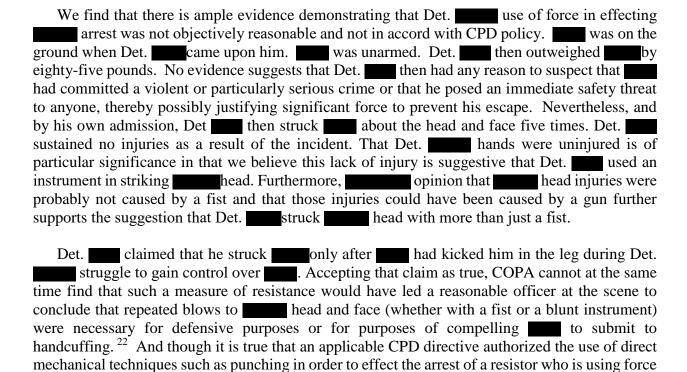
<sup>&</sup>lt;sup>19</sup>Attachment 19.

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense. See *e.g.*, *People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true." *Id.* at ¶ 28.

## VII. ANALYSIS

# A. Allegation #1 against Detective : His Use of Force in Effecting Arrest

A law enforcement officer violates a person's Fourth Amendment constitutional rights when the officer uses force that is not objectively reasonable in effecting that person's arrest. A CPD officer who does so also violates Rules 1, 6, and 8 of the CPD Rules of Conduct, which respectively prohibit the violation of a law, the disobedience of a directive, and maltreatment of any person. Whether an officer's use of force in effecting an arrest was objectively reasonable and therefore lawful and proper depends upon a number of factors, including the severity of the crime that the arrested person was suspected of committing, whether that person posed an immediate threat to the officer's safety or to the safety of others, and whether he was actively resisting arrest or attempting to evade arrest by flight. 1



<sup>&</sup>lt;sup>20</sup>Graham v. Connor, 490 U.S. 386, 388 (1989).

<sup>&</sup>lt;sup>21</sup>*Id.*, 490 U.S. at 396.

<sup>&</sup>lt;sup>22</sup>See *Graham v. Connor*, 490 U.S. at 386 (the reasonableness of a particular use of force "must be judged from the perspective of a reasonable officer on the scene").

or threatening the imminent use of force, <sup>23</sup>a separate applicable directive only permits officers to use force that is *reasonably believed to be necessary* to effect such an arrest. <sup>24</sup>

For the above reasons, COPA finds that Allegation 1 against Det. supported by a preponderance of the evidence. The allegation is therefore sustained.

# B. Allegations Involving the Officers' Failure to Get Immediate Medical Treatment

Det and Sgt. each admitted that he failed to obtain immediate medical treatment for . Their conduct therefore violated a CPD directive applicable at the time of the incident, which provided that "[i]n the event that an arrestee requires immediate medical care, the arrestee will be transported to the nearest approved emergency room ... prior to any further arrest processing." Their conduct therefore violated Rules 5, 6, and 8 of the CPD Rules of Conduct, which respectively prohibit the failure to perform a duty, the disobedience of a directive, and maltreatment of any person.

For the above reasons, COPA finds that Allegation 2 against Detective and Allegations 1 and 2 against Sgt. are sustained.

# C. Allegations Involving Detective Alleged Verbal Abuse

COPA finds that there is a lack of evidence to support the allegations of verbal abuse. Specifically, CPD documentation shows that Det. was absent from work on the dates that his misconduct allegedly occurred. Accordingly, Allegations 3 and 4 against Det. are therefore unfounded.

## VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

## a. Detective

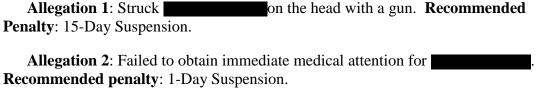
i. Complimentary and Disciplinary History: Deployment Operations Center Award, 1; Problem Solving Award, 2; Emblem of Recognition – Physical Fitness, 11; Attendance Recognition Award, 4; Presidential Election Deployment Award 2008, 1; Special Commendation, 2; 2004 Crime Reduction Ribbon, 1; Department Commendation, 12; Honorable Mention, 233; Police Officer Of The Month Award, 1; Complimentary Letter, 11; NATO Summit Service Award, 1; Honorable Mention Ribbon Award, 1; Top Gun Arrest Award, 1; Joint Operations Award, 1; 2009 Crime Reduction Award, 1; Unit Meritorious Performance Award, 1. Det. had no prior sustained findings of misconduct within the past 5 years.

## ii. Recommended Penalty, by Allegation

<sup>&</sup>lt;sup>23</sup> See CPD General Order G03-02-02 Force Options (Effective Date: May 16, 2012) at Part III.C.

<sup>&</sup>lt;sup>24</sup>See CPD General Order G03-02 *Use of Force Guidelines* (Effective Date: October 1, 2002) at Part II.A ("excessive force or unwarranted physical force ... will not be tolerated").

<sup>&</sup>lt;sup>25</sup>CPD General Order G06-01-01 Field Arrest Procedures (Effective Date: December 19, 2012), Part X.A.



# b. Sergeant

i. Complimentary and Disciplinary History: Deployment Operations Center Award, 1; Problem Solving Award, 1; Emblem of Recognition – Physical Fitness, 15; Attendance Recognition Award, 3; Presidential Election Deployment Award 2008, 1; 2004 Crime Reduction Ribbon, 1; Department Commendation, 8; Honorable Mention, 224; Police Officer Of The Month Award, 1; Complimentary Letter, 7; NATO Summit Service Award, 1; Honorable Mention Ribbon Award, 1; Top Gun Arrest Award, 1; Joint Operations Award, 1; 2009 Crime Reduction Award, 1; Unit Meritorious Performance Award, 1. Sgt. had no prior sustained findings of misconduct within the past 5 years.

## ii. Recommended Penalty, by Allegation

**Allegation 1**: Struck on the head with a gun. **Recommended Penalty**: 15-Day Suspension.

**Allegation 2**: Failed to obtain immediate medical attention for **Recommended penalty**: 1-Day Suspension.

#### IX. CONCLUSION

Based on the analysis set forth above, COPA finds and recommends:

| CPD Member | Allegation   | Finding /<br>Recommendation      |
|------------|--|----------------------------------|
|            | It is alleged that on 29 April 2014, at approximately 2030 hours, in the vicinity of the alley, you: |                                  |
|            | 1.) Struck on the head with a gun; and   | Sustained / 15-Day<br>Suspension |
|            | 2.) Failed to obtain immediate medical attention for   | Sustained / 1-Day<br>Suspension  |

<sup>&</sup>lt;sup>26</sup> On September 15, 2015, Sgt. entered in a mediation agreement with IRPA regarding log# 1071109. In that agreement, Sgt, agreed to not contest the following: 1) the allegations of misconduct made against him in log 1071109; (2) any finding of "Sustained" for the allegations of misconduct made against him under log 1071109, and; (3) a 1-day suspension for any finding of sustained under log 1071109.

| It is alleged that on or about 13/14 August, in the vicinity of, at approximately 1100 hours, you:  3.) Verbally abused Mr in that you called him, "pussy, faggot, and bitch," and asked him if he was gay.  | Unfounded  |
|--|--|
| It is also alleged on or about 20 August 2014, in the vicinity of the vicinity | Unfounded  |
| It is alleged that on 29 April 2014, at approximately 2030 hours, in the vicinity of the alley, you:  1.) Failed to obtain immediate medical attention for the scene to the hospital prior to Mr. transport to the police district.  | Sustained / 1-Day<br>Suspension<br>Sustained / 1-Day<br>Suspension |

Approved:

|   | July 22, 2019 |
|---|---------------|
| Andrea Kersten<br>Deputy Chief Investigator | Date          |

# Appendix A

Assigned Investigative Staff

| Squad#:                            |         |
|------------------------------------|---------|
| Investigator:                      |         |
| <b>Supervising Investigator:</b>   |         |
| <b>Deputy Chief Administrator:</b> | Kersten |